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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-682

SANTA CLARA PUEBLO and LUCARIO PADILLA, individually and as Governor of SANTA CLARA PUEBLO,
Petitioners,

v.

JULIA MARTINEZ, on behalf of herself and all others similarly situated, and AUDREY MARTINEZ, on behalf of herself and all others similarly situated.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION TO FILE BRIEF AMICI CURIAE AND BRIEF OF AMICI CURIAE OF THE PUEBLO DE COCHITI, THE PUEBLO OF ISLETA, THE PUEBLO OF JEMEZ, THE PUEBLO OF LAGUNA, THE PUEBLO OF SANDIA, THE PUEBLO OF SAN FELIPE, THE PUEBLO OF SAN ILDEFONSO, THE PUEBLO OF TAOS, THE HUALAPAI TRIBE, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION AND THE ALL-INDIAN PUEBLO COUNCIL, INC.

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MOTION TO FILE BRIEF AMICI CURIAE

Come now The Pueblo de Cochiti, the Pueblo of Isleta, The Pueblo of Jemez, The Pueblo of Laguna, The Pueblo of Sandia, The Pueblo of San Felipe, The Pueblo of San Ildefonso, The Pueblo of Taos, The

Hualapai Tribe, The Salt River Pima-Maricopa Indian Community, The Confederated Tribes of the Umatilla Indian Reservation and The All-Indian Pueblo Council, Inc., by and through their attorneys, and allege:

1. The movants herein other than the All-Indian Pueblo Council, Inc., are Indian tribes duly recognized by the Federal Government, exercising powers of self-government and subject to the provisions of the Act of April 11, 1968 (84 Stat. 77 et seq.; 25 U.S.C., Sections 1301 et seq.) hereinafter called the Indian Civil Rights Act (ICRA).

2. The All-Indian Pueblo Council Inc., is an organization consisting of the nineteen Indian Pueblos located in New Mexico, duly chartered as a non-profit corporation under the laws of the State of New Mexico, the purpose of which is to act in concert for the advancement of goals common to the Indian Pueblos of New Mexico.

3. Consent has been obtained from the Petitioners to file this motion and a brief *amici curiae* in this cause. Consent has not been obtained from the Respondents.

4. The tribes, pueblos and organizations herein named, wish to submit a brief *amici curiae* in support of the Petition for Writ of Certiorari heretofore submitted by the Petitioners.

5. The basic questions of law herein are:

(1) Does the ICRA vest the Federal Courts with the jurisdiction to determine questions of tribal membership?

(2) If the Federal Court does have such jurisdiction, does the Indian Civil Rights Act prohibit an Indian tribe, in the exercise of self-government powers, from enacting or enforcing an ordinance which imposes different membership standards on the acquisition of tribal membership, based on the sex of the member parent of a child seeking membership?

These questions are of utmost concern and importance to the movants herein for the reason that the decision of the Tenth Circuit in *Martinez, et al.* v. *Santa Clara Pueblo, et al.*, No. 75-1615, reported at 540 F.2d 1039, will, if allowed to stand without review by this Court, severely cloud the long standing exclusive authority of these pueblos and tribes to determine their own membership and to determine the membership standards now in force among these pueblos and tribes and other Indian tribes in the United States and will also cause serious disturbance of religious, cultural and traditional patterns of living in these tribes and pueblos.

6. The above questions of law will not be adequately presented to this Court for the reason that the facts presented to the trial Court, as reviewed by the Tenth Circuit, do not and cannot show the impact of this question of law upon the religious, cultural and traditional patterns of living in these tribes and pueblos.

WHEREFORE, the above-named tribes and pueblos and the All-Indian Pueblo Council, Inc., respectfully move this Court for an Order allowing them to file a brief

amici curiae in support of the Petition for Writ of Certiorari filed in this cause.

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BRIEF OF AMICI CURIAE

I.

INTEREST OF AMICUS CURIAE

Each of the pueblos and tribes represented herein are duly recognized Indian tribes under the administrative jurisdiction of the United States Department of the Interior. Each of these tribes except the Pueblo of

Jemez, has accepted the Act of June 18, 1934 (48 Stat. 984 et seq.; 25 U.S.C., Sec. 461 et seq.). The Pueblos of Laguna and Isleta and the Hualapai Tribe and Salt River Pima-Maricopa Indian Community have adopted Constitutions pursuant to Section 16 of said Act (48 Stat. 987; 25 U.S.C., Sec. 476). The Confederated Tribes of the Umatilla Indian Reservation have adopted a Constitution dated November 4, 1949, approved by the Secretary of the Interior on December 7, 1949. This Constitution was not adopted pursuant to the 1934 Act. The remaining tribes have not adopted constitutions under such Act of Congress, or otherwise, but are governed largely by custom and tradition, largely religious in nature.

The Isleta, Laguna, Hualapai Salt River-Pima-Maricopa and Umatilla Constitutions set forth specific membership standards, which relate to date of birth, blood quantum and marital status of parents. The Salt River Pima-Maricopa Constitution, in addition, authorizes membership procedures by Ordinance of the Council. True copies of the Isleta, Laguna, Hualapai, Salt River Pima-Maricopa and Umatilla Constitutions, as the same refer to membership standards are attached as Appendices A through E, inclusive.

San Ildefonso Pueblo has enacted an ordinance, dated August 26, 1975, which prohibits women members who marry non-members from residing on the reservation, a prohibition that does not apply to male members who marry non-members. This ordinance is a codification of long-existing traditional rules, based on religion, land holdings and tradition. A true copy of the San Ildefonso Pueblo Ordinance, and the affidavit of Governor James R. Martinez are attached as Appendices G and F.

The other Pueblos herein represented have no Constitutional or other written membership rules which create distinctions based on sex. However, the traditional unwritten rules of Cochiti Pueblo and Isleta Pueblo (see Appendix H and Appendix L) and other Pueblos show a general consistency with the practices at San Ildefonso.

While Isleta and Laguna Pueblos and the Hualapai Tribe, the Salt River Pima-Maricopa Indian Community and the Confederated Tribes of the Umatilla Indian Reservation have assimilated some of the Anglo ways in forming their Tribal governments; nevertheless, there is a traditional background in connection with each of the membership standards prescribed in their respective constitutions.

The point is that the governmental structure of all the pueblos, including those which have adapted written codes, is part and parcel of larger tradition, based primarily on unanimity of action. This is clearly set forth in some detail in the report entitled "*The Pueblo Social Organization as the Basis for Rules of Tribal Membership*" by Dr. Florence Hawley Ellis (hereinafter "Ellis"). The Ellis Report is attached to this brief as Appendix K.

The concern of the tribes other than the pueblos is a fear that if the Tenth Circuit decision stands as the law, no standard of tribal membership will be free from doubt.

The end result of this litigation will, therefore, have a serious impact upon the tradition, culture and religion of these pueblos and other tribes similarly situated. If the decision is allowed to stand, a substantial number of Tribal Constitutions, Ordinances, rules and

traditional practices, including religious practices, will have questionable validity. The basic questions are: (1) Do the Federal Courts have jurisdiction in tribal membership disputes, and (2) Can an Indian tribe, in the exercise of self-government, discriminate on the basis of sex or other basis which, in strict Fourteenth Amendment nomenclature is discriminatory, but which is in accord with long standing cultural and religious values. These questions are of such overwhelming importance to these tribes, and so fundamental to Indian governmental, social and religious structure that a review of the Tenth Circuit decision by this Court is imperative.

II.

ARGUMENT

POINT ONE

The Decision of the Tenth Circuit Runs Counter to Prior Judicial Decisions Regarding Tribal Membership, Both Before and After the Enactment of the ICRA.

Prior to the enactment of the Indian Civil Rights Act on April 11, 1968 (84 Stat. 77; 25 U.S.C., Section 1301 et. seq). (hereinafter "ICRA"), the Courts would not and did not inquire into tribal membership standards or tribal property inheritance laws. *Raff* v. *Burney,* 168 U.S. 218, 18 S. Ct. 60, 42 L.ed. 442 (1897); *Martinez* v. *Southern Ute Tribe,* 249 F.2d 915 (10th Cir. 1957); *Simmons et al.* v. *Seelatsee,* 222 F. Supp. 808 (D.C. Wash. 1965), affirmed 384 U.S. 209, 86 S. Ct. 1459, 16 L.ed. 2d 480. The tribes had the sole authority to determine their own membership and membership qualifications and standards. *Martinez* v. *Southern Ute Tribe, supra, Bonifer* v. *Smith,* 154 Fed. 883 (D.C. Ore. 1907).

The rule, prior to the ICRA, was clearly stated by the eminent authority on Federal Indian law, Felix S. Cohen in his *Handbook of Federal Indian Law,* U.S. Department of the Interior, G.P.O., 1941, at page 133:

> "The Courts have consistently recognized that in the absence of *express* legislation by Congress to the contrary, an Indian Tribe has complete authority to determine all questions of its own membership. It may thus, by usage or written law, or by treaty with the United States or inter-tribal agreement, determine under what conditions persons may be considered members of the tribe (emphasis supplied).

It must be kept in mind that the power to determine membership and all other inherent tribal powers are reserved powers and not powers granted to the tribes by the United States. *Worchester* v. *Georgia,* 6. Pet. 515 (1832); *Cherokee Nation* v. *Georgia,* 5 Pet. 1 (1831); *United States* v. *Winans,* 198 U.S. 371, 25 S. Ct. 662, 49 L. ed. 1089 (1905) Fish. 3; *United States* v. *Washington,* 384 F. Supp. 312, 407 (W.D. Wash. 1974).

Has the enactment of the ICRA changed this rule? Is the ICRA *express* legislation allowing inquiry into tribal membership standards? In particular, does the "equal protection" clause of 25 U.S.C., Sec. 1302 (8) now grant to the Federal judiciary the power to inquire into the standards established by Tribes to regulate their own membership? In *Slattery* v. *Arapahoe Tribal Council,* 453 F. 2d 278 (10th Cir., 1971), the Court indicated, without deciding, that the ICRA might change the former rule that the Federal Courts had no jurisdiction to inquire into tribal membership questions. However, the Federal Courts, in post-ICRA cases,

have been loath to interfere with tribal membership standards. Thus, in *Yellowbird* v. *Oglala Sioux Tribe of South Dakota,* 380 F. Supp. 438 (D.C. S.D. 1974), it was held that tribal membership provisions are not subject to judicial examination for alleged "equal protection" violations unless it could be shown that these standards were not uniformly applied. See also *Daly* v. *United States et al.,* 483 F.2d 700 (8th Cir. 1973) and *Slattery* v. *Arapahoe Tribal Council, supra.*

The rationale of the Courts has been that membership is a matter involving substantial tribal interest and that tribal decisions must not be lightly overturned by the imposition of Anglo-Saxon standards of justice on alien cultures. *McCurdy* v. *Steele,* 506 F.2d 654 (10th Cir. 1974); *Yellowbird* v. *Oglala Sioux Tribe of South Dakota, supra.* We submit that the basic post-ICRA rule has been: Start with the presumption that an Indian tribe has the inherent power to determine its own membership and establish membership standards, in the exercise of its internal sovereignty and to preserve its cultural integrity, alien to the Anglo culture. Presume also that the membership has been determined to accomplish these objectives. Look only to the factual question of whether or not the standard has been applied uniformly and then only if there is *no* uniformity in application, must relief be granted. This approach is completely consistent with the position taken by Mr. Cohen, cited above. It recognizes that tribal membership is a matter inherently within the orbit of tribal self government.

We submit that the approach we have stated recognizes the fundamental fact the membership in an Indian tribe is completely tied in with cultural norms established by the tribes. This is most emphatically so

with the New Mexico pueblos, as detailed by Ellis (Appendix K), and by the various affidavits made Appendices hereto.

The District Court in this case followed this approach. Judge Mechem ruled ". . . (T)he Act and its equal protection guarantee must be read against the background of tribal sovereignty and interpreted within the context of Tribal law and custom" 402 F. Supp. at p. 17. And he concluded "that 25 U.S.C., Section 1302 (8) should not be construed in a manner that would invalidate a tribal membership ordinance when the classification attacked is one based on criteria that has been traditionally employed by a tribe in considering membership questions." *Id.* at 18.

The Tenth Circuit attacked the question from precisely the opposite direction. After reviewing the legislature history of the ICRA, the Court concluded that since the Congress had deleted the First Amendment non-establishment clause and the Fifteenth Amendment protections Act, leaving Fourteenth Amendment equal protection guarantees in the Act, this case was, essentially, a standard Fourteenth Amendment equal protection case, only inferentially involving an Indian context. *Opinion,* pp. 10-14. The Court said, *Id.* p. 14 "The legislative proceedings do manifest a congressional intent to recognize the specific guarantee unless the tribal custom or principle outweighs the specific guarantee "*Id.,* p. 14. From that statement, the Court posed the essential question, as it viewed the matter: "And so we ask the question whether a tribe may extend to men members fundamental rights while simultaneously denying the same rights to its women" *Id.,* p. 14.

We submit that the Circuit Court, by thus viewing the problem, took an approach radically different from the approach heretofore taken by the Federal Courts on such questions. The Tenth Circuit approach assumed that the Santa Clara membership ordinance would, if set in an outside context, clearly violate Fourteenth Amendment equal protection standards and therefore, placed the burden on Santa Clara to show an overriding reason why its membership standard should stand, as viewed against this outside standard. This approach is, we submit, a substantial deviation from the approach taken by the Eighth Circuit in *Daly*, the Ninth Circuit in *Laramie* v. *Nicholson*, 487 F. 2d 315 (9th Cir. 1973), and in its own previous decisions in *Slattery* and *Groundhog* v. *Keeler*, 442 F. 2d 674 (10th Cir. 1971).

The confusion resulting from this change in direction from its own prior decisions and from the basis used by other circuits in and of itself merits the granting of the Petition for Writ of Certiorari in this case. Only this Court can establish the proper perspective from which the Circuits can view individual Indian attacks on tribal actions resulting from powers inherent in tribal sovereignty and based on traditional and cultural concepts foreign to established Fourteenth Amendment norms.

POINT TWO

The Decision of the Tenth Circuit Ignores the Religious and Traditional Bases of the Santa Clara Membership Ordinance.

The Tenth Circuit not only put the burden on Santa Clara to show a compelling interest in the enactment of the membership ordinance of 1939, but held that the facts do not support a compelling interest. In doing so,

the Circuit Court ignored the fact findings made upon the trial. The District Court held that the Santa Clara membership policies are no more or less than a mechanism of social, and to an extent, psychological and cultural, self-definition noted in certain traditional values which have not been entirely vitiated. 402 F. Supp. at p. 15, 17. Ample evidence supports these findings.

The Circuit Courts have held that 25 U.S.C., Section 1302 (8) requires existing tribal law to be applied with an even hand. *Crowe* v. *Eastern Band of Cherokee Indians, Inc.*, 506 F. 2d 1231 (4th Cir. 1974); *Wounded Head* v. *Tribal Council of Oglala Sioux Tribe*, 507 F. 2d 1079 (8th Cir. 1975), and that some element of due process must be observed in granting or denying benefits *Crowe* v. *Band of Cherokee Indians, Inc., supra.; Johnson* v. *Lower Elwha Tribal Community*. 484 F.2d 200 (9th Cir. 1973); *O'Neal* v. *Cheyenne River Sioux Tribe*, 482 F. 2d 1140 (8th Cir. 1973). All of these decisions presuppose the basic validity of tribal classifications and look to the application of these classifications in particular instances to determine even-handedness and due process. It is assumed that 25 U.S.C., Sec. 1302 (8) should not be construed to invalidate a tribal classification based on traditionally employed criteria. There is ample evidence in the instant case supporting such criteria. The Tenth Circuit ignored these traditional criteria and applied standard Fourteenth Amendment standards, applicable to State action, to decide the case.

We submit that the Circuit Court, by ignoring the traditional value base from which the 1939 Santa Clara Ordinance was enacted, seriously limits any Indian tribal standard value as the basis of tribal legislative

enactment and places tribal values at the mercy of standard non-Indian Fourteenth Amendment equal protection norms. This approach has not been used in any number of ICRA cases, cited above. The rule has been and, we submit, should be that only as a tribe incorporates non-Indian standards as the bases of its internal operations and rules, should the actions of the tribe be viewed in the context of non-Indian Fourteenth Amendment norms. *Daly* v. *United States, et al., supra.*

POINT THREE

The Circuit Court's Decision Has a Serious Impact Upon the Customs, Traditions, Religion and Sovereignty of the Pueblos of New Mexico

The decision of the Circuit Court will cause serious problems with the New Mexico Pueblos and other tribes. It will cast grave doubt on long-established membership standards. For example, Article II of the Pueblo of Laguna Constitution (Appendix A) provides, at Section 1(d)(1) and (2) a clear distinction between the membership rights of certain children based in part on the sex of the member parent. Under the Circuit Court's decision, the classifications of 1(d)(1) as opposed to 1(d)(2) are placed in serious doubt. Yet, there was, from the tribal view, ample reason for this classification (See Appendix I). The Pueblo of San Ildefonso Ordinance of August 26, 1975, while not addressed to membership per se, would also be under serious question (Appendix G). It is, in fact, now the subject of an ICRA attack in *McReynolds* v. *Pueblo of San Ildefonso;* No. 75-638-P, USDCNM, filed June 29, 1976. Yet, this ordinance is a reiteration of existing custom with ample factual basis, in the context of San Ildefonso custom (Appendix G).

The affidavits of Jerry Quintana (Cochiti), Juan de Jesus Romero (Taos), and Seferino Lente (Isleta) (Appendices H, J and L) show a number of male-dominance rules that can, and most assuredly will, be subject to Court attack if the decision of the Tenth Circuit is allowed to stand. Thus, the conclusions of Ellis that this case has the potential of upsetting or destroying entire social structures is substantiated by the Pueblo people themselves.

The ICRA was not intended by Congress to impair the internal structure tribal governments, especially those tribal governments who operate on a tradition which has a religious base. This is abundantly clear from a legislative history of the act. This history is alluded to in some detail by the Circuit Court. *Opinion,* p. 9-10. Suffice it to say that S.961, the original bill, would have subjected tribes to the same constitutional civil rights restraints as are imposed by the Federal Constitution. However, this bill was not enacted and, instead, S.1843 became the ICRA. S.1843 was the result, in part, of Congressional recognition of the very problem we now face, ie., the potential of non-Indian equal protection standards causing chaos in tribal membership standards. The testimony of Arthur Lazarus, Jr., on behalf of the Association of American Indian Affiairs (*Hearings, Sub-Committee on Constitutional Rights, Senate Committee on the Judiciary,* 89th Cong., 1st Sess., G.P.O., 1965), clearly illustrates the problem.

> "* * * Secondly, S.961 unintentionally would impair tribal sovereignty in areas unrelated to individual rights and on matters where change would be, and is, opposed by an overwhelming majority of the people. Among the Indian nations in the State of New York, for example, eligible for tribal

membership descends exclusively through the female line and, in addition, only tribal members may qualify to inherit interests in reservation land-both traditional practices which the Senecas and Tuscaroras clearly wish to preserve, but which might be barred by the equal protection clause or some other provision of the Constitution. Similarly, constitutional principles regarding the separation of church and state could cause serious difficulties among some of the Pueblos in New Mexico, while the doctrine of "one man, one vote" has no valid application to an Indian tribe still governed by a chiefs council. * * *"

The matters illustrated by Mr. Lazarus, among others, are precisely the reason that S. 1843, instead of S. 961, became law.

The problem is also put in focus by reference to certain hearings held in Albuquerque, New Mexico on April 11, 1969 before Senator Sam Ervin. *See Amendments to the Indian Bill of Rights, Hearing, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary,* 91st Cong., 1st Sess., on Title II of the Civil Rights Act of 1968. Concern was expressed by the Pueblo leaders that the 1968 Act, in particular "equal protection", could severely impair existing Pueblo governments. The following remarks by Senator Ervin are pertinent:

* * * "I would question whether the clause in the bill stating that those who rule shall see that people have *equal protection* of the laws would change your method of selecting leaders at all. In other words, the object of the clause is merely to prohibit leaders from having one law for one man and a different law for another man in the same situation. So I don't think that you are going to have the one-man, one-vote system thrust on you under

this act. You would retain your individual Pueblos, which correspond to the States, and certain things would be left to them. I assume you have your overall All Pueblo Council for all of the Pueblos, like the Federal Government. Certainly it is not the purpose of this act to change your form of government, especially regarding the manner in which you chose officers. I don't believe that that is really something you have to fear." * * *

Likewise, it would seem that membership standards and qualifications and other standards based on sex differentiations should not be upset under a notion of "equal protections". These standards are part and parcel of tradition and a government based on such tradition.

The Circuit Court has, in effect, reversed the process by going back to S.961 standards. The Court has also ignored judicial precedent which recognized this premise, including its own prior pronouncements. *Groundhog* v. *Keeler, supra; Lohnes* v. *Cloud,* 366 F. Supp. 619 (D.C. N.D. 1975); *Solomon* v. *La Rose,* 325 F. Supp. 715, 718 (D.C. Neb. 1971); *Wounded Head* v. *Tribal Council of Oglala Sioux Tribe, supra.; McCurdy* v. *Steele,* 353 F. Supp. 629 (D.C. Utah 1973).

III.

CONCLUSION

This Court must grant the Petition for Writ of Certiorari filed by the Petitioner Pueblo of Santa Clara, in order to establish the fundamental principle that Tribal membership standards and associated internal tribal rules are not the subject of sweeping application of non-Indian Fourteenth Amendment equal protection

standards to the tribes, whose traditions are based on concepts alien to such standards.

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APPENDIX

APPENDIX A

Article II—Membership

Amended Constitution and By Laws of the Pueblo of Laguna, New Mexico, Approved November 10, 1958.

Section 1. Qualifications. The membership of the Pueblo shall consist of the following persons, provided they have not renounced or do not hereafter renounce such membership by joining another tribe or otherwise, and provided further, that any person 21 years of age or over, living on the date of the approval of this revised Constitution, shall not be entitled to membership unless enrolled or unless application for enrollment has been filed within one year from the approval of this revised Constitution in the manner to be prescribed by ordinance of the Council, except as hereinafter provided in subsection (e) of this Section.

(a) All persons of any Indian blood whose names appear on the 1940 United Pueblos Agency census roll for the Pueblo of Laguna as enrolled members: provided that any person of one-half or more Laguna blood whose name the Council finds to have been erroneously omitted from said roll shall be added to it upon application by such person within one year from the approval of this revised Constitution, in the manner to be prescribed by ordinance of the Council. Any such addition shall have the effect of recognizing such person's membership from birth. Applications for recognition of membership may also be filed on behalf of a deceased person, if done for the purpose of establishing membership rights under subsections (b), (c), or (d) of this Section.

(b) All persons born since the 1940 census whose mother and father are both members of the Pueblo of Laguna.

(c) All persons of one-half or more Indian blood born after the 1940 census but prior to the approval of

this revised Constitution whose mother or father is a member of the Pueblo of Laguna.

(d) All persons of one-half or more Laguna Indian blood born after approval of this revised Constitution:

(1) whose mother is a member of the Pueblo of Laguna; or

(2) whose father is a member of the Pueblo of Laguna, provided the child is born in wedlock.

(e) Provided that the persons referred to in subsections (b), (c), (d)(1) and (d)(2), above, shall not be entitled to membership in the Pueblo unless enrolled or unless application for enrollment has been made by their parent, parents, or other persons for them, or by themselves, prior to their 22nd birthday; provided further, that all such persons shall have at least one year from the date of approval of this revised Constitution in which to enroll themselves or make application for enrollment as members of the Pueblo, in the manner to be prescribed by ordinance of the Council.

(f) All persons naturalized as members of the Pueblo of Laguna, provided that a person who has no Indian blood shall never be naturalized.

Section 2. Determination of Qualifications. The Council shall by ordinance prescribe procedures for the determination or renunciation of membership pursuant to Section 1 of this Article. All determinations made in accordance with such procedures shall be final.

Section 3. Observance of Pueblo Constitution and Laws. All members of the Pueblo of Laguna and all other persons who are permitted to live on the reservation of the Pueblo by the proper officers of the Pueblo shall be governed by this Constitution, the Bylaws and all ordinances, customs,

and regulations of the Pueblo as the same now exist or are hereafter altered, and as interpreted by the proper officers of the Pueblo. Non-members of any Indian blood may be permitted to live on the lands of the Pueblo only if they agree in writing to be governed in this way. Non-Indians may be permitted to live upon the lands of the Pueblo only if they receive written authorization from the Council and only on such terms and conditions as the Council may prescribe, but a non-Indian may not, without his consent, be subject to any punishment by the Pueblo other than expulsion for failure to abide by his written promise.

Section 4. Every member of the Pueblo of Laguna shall be entitled to an equal share in per capita distribution, provided that no right to a share shall vest in such member unless such member is an enrolled member on the date such per capita distribution in Article VIII, Section 3 of the Bylaws.

APPENDIX B

Article II—Membership

Constitution for the Pueblo of Isleta, New Mexico, Adopted February 23, 1970.

The following persons shall be members of the Pueblo of Isleta, provided such persons shall not have renounced, or do not hereafter renounce their membership by joining another tribe or pueblo, or otherwise:

Section 1. Persons of one-half (½) or more degree of Isleta Indian blood and Isleta parentage shall be members of the Pueblo of Isleta, provided they have not renounced their right to membership.

Section 2. All persons of one-half (½) or more degree Isleta Indian blood whose names appear on the official census roll maintained by Southern Pueblos Agency, as of January 1, 1970.

Section 3. All persons of one-half (½) or more degree of Isleta Indian blood born after January 1, 1970.

Section 4. Any person of one-half (½) or more degree of Indian blood who is hereafter naturalized or adopted in conformity with an appropriate ordinance of the council or according to the laws and traditions of the Pueblo of Isleta.

Section 5. No person shall be or become a member of the Pueblo of Isleta who is an enrolled member of any other Indian tribe or pueblo.

Section 6. Non-Indians shall never become members of the Pueblo of Isleta.

Section 7. The council shall have the power to adopt ordinances, consistent with this constitution, to govern future membership, loss of membership and the adoption of naturalization of members into the Pueblo of Isleta, and to govern the compilation and maintenance of a tribal roll.

Section 8. No decree of any non-tribal court purporting to determine membership in the pueblo, paternity or degree of Isleta Indian blood shall be recognized for membership purposes. The council shall have original jurisdiction and sole authority to determine eligibility for enrollment for all tribal purposes except where the membership of an individual is dependent upon an issue of paternity, in which case the courts of the pueblo shall have authority and exclusive jurisdiction.

APPENDIX C

Article II—Membership

Constitution and By Laws of the Salt River Pima-Maricopa Indian Community. Approved March 18, 1971.

Section 1. Acquisition of membership. The membership of the Salt River Mima-Maricopa Indian Community shall consist of:

(a) All persons of Indian blood whose names appear, or rightfully should appear, on the official allotment roll of the Salt River Reservation, shall be members of the Salt River Pima-Maricopa Indian Community.

(b) All descendants of members of the Salt River Pima-Maricopa Indian Community if they are of at least one-fourth (¼) degree Indian blood and are not members of any other Indian tribes. Descendants possessing less than one-fourth (¼) degree Indian blood may be admitted to membership by a majority vote of the community council.

(c) Such other persons as the community council may see fit to admit to membership under rules of uniform application, provided no person may be admitted to membership unless he is a United States citizen and is a direct descendant of a member of the Salt River Pima-Maricopa Indian Community or is married to a member and has at least one-fourth (¼) degree Indian blood of a recognized Indian tribe.

(d) No decree of an outside court determining membership in the Salt River Pima-Maricopa Indian Community shall be recognized by the Salt River Pima-Maricopa Indian Community for membership purposes. All questions relating to the paternity of an applicant for enrollment shall be decided by the

tribal court and the decision of the court shall be final.

Section 2. Future membership. The community council shall have the power to pass ordinances subject to approval by the Secretary of the Interior or his authorized representative governing future membership, and the adoption of members by the Salt River Pima-Maricopa Indian Community.

Section 3. Membership roll. The community council shall provide for the establishment and maintenance of an up-to-date roll of members of the Salt River Pima-Maricopa Indian Community and shall provide a fair hearing to any claimant to membership aggrieved by the omission or deletion of his name from such roll.

APPENDIX D

Article III—Membership

Amended Constitution and By Laws of the Hualapai Tribe of the Hualapai Reservation, Arizona, Approved October 22, 1955.

Section 1. The membership of the Hualapai Tribe shall consist of:

(a) All persons who are members of the Tribe on the date when this revised Constitution is finally approved.

(b) Any child of one-fourth degree or more of Hualapai Indian blood who is born to a resident member after the date this Constitution is approved, and any child of one-fourth degree or more of Hualapai Indian blood born to a non-resident member, after the date this Constitution is approved, provided that a declaration of intention to maintain membership of such non-resident child is submitted to the Hualapai Tribal Council within one year from the date of birth of such child. The method of declaring intention of membership shall be determined by ordinance of the Council.

Section 2. The Council shall have the power to pass ordinances, subject to review by the Secretary of the Interior or his authorized representative, governing future membership, loss of membership, and the adoption of members by the Hualapai Tribe.

APPENDIX E

Article IV—Members

Constitution and By Laws of the Confederated Tribes of the Umatilla Reservation in Oregon, Approved December 7, 1949.

The membership of the Confederated Tribes shall consist, as follows, of:

(a) All persons of Indian blood whose names appear on the official census roll of the Confederated Tribes as of July 1, 1949; provided, that corrections may be made in said roll by the General Council within five (5) years from the adoption and approval of this Constitution and By-laws, subject to the approval of the Secretary of the Interior or his authorized representative.

(b) All children born to enrollees of the Confederated Tribes, who are of at least one-fourth (1/4) degree of blood of the Confederated Tribes. Where only one parent of such children is an enrollee of the Confederated Tribes, the children may become members only upon application accepted by the General Council.

(c) Any other person of blood of the Confederated Tribes may, upon application, be admitted by a majority vote of the General Council to participate in tribal government and to vote and to hold office. It is extremely understood, however, that such persons shall not participate in any right or claim arising out of treaties to which the Confederated Tribes are a party.

APPENDIX F

Affidavit

STATE OF NEW MEXICO }
COUNTY OF SANTA FE } ss:

JAMES R. MARTINEZ, of lawful age, upon being duly sworn on his oath, states:

1. He is the Governor of the Pueblo of San Ildefonso, an Indian Tribe. He has been Governor of said Pueblo since his inauguration into office in January, 1975.

2. Attached to this affidavit is a true copy of the Ordinance of the Pueblo of San Ildefonso, dated August 26, 1975, whereby female members who marry non-members are required to leave the Pueblo, but male members who marry non-members do not have the same restrictions. This also provides that Indians who are not members may apply for membership.

3. The Ordinance dated August 26, 1975 is a codification of the traditional practices of the Pueblo of San Ildefonso, based on Tribal custom and religious practice. The basis of this custom and religious practice is:

The San Ildefonso Pueblo government has a traditional and religious basis. The men are the backbone of the religion and, therefore, the men run the government.

The method of selecting the Government is quite simple. The religious leaders of the various religious fraternities get together and go over the names of those men whom the religious leaders think will make good officials. In the old days, they met in the Kivas but now the meetings are usually held in the Head man's house. The selection involves a series of meetings and the result is a unanimous agreement among the religious leaders of the two or three men who would make the best Governor and Lieutenant Governor. Then lesser religious leaders add to these names

to fill out the Council. There is always unanimous agreement before the names are arrived at. These names are submitted to the male membership who always ratify the selections because they respect the opinion of the religious leaders. They only real choice before the male membership is who is going to be Governor between the two or three men named by the religious leaders. The Governor is selected by unanimous choice after consideration of those men selected by the religious leaders. The nominees not selected as Governor are always made members of the Council.

Non-Indians or other outsiders, such as an Indian from another Tribe who is not a member, are never allowed to participate in this kind of selection. In particular, the presence of a non-Indian would be a bad influence because of the non-Indian just would not think the same way as an Indian and would not give the same consideration to the naming of the officials.

The officials also do not want non-Indian men present in the Pueblo. There are several reasons for this, all based on a fear of non-Indian influence in the Pueblo. First, non-Indian men might pry into the secret religious aspects of Pueblo culture and try to change it or, perhaps, destroy it. Also, non-Indians will try to avoid performance of the community obligations required of all male members. Lastly, our experience is that the non-Indians who want to marry Pueblo women and move into the Pueblo are usually men looking for a way out of paying property taxes on their land.

The matter of community obligations is extremely important. These community obligations have a religious basis and all men are required to perform them. If a man does not perform them, the religion is violated because the religious rule is that all must perform. These duties are performed at various times during the year, not just on feast days. The concept is that all must pull their own weight and if one man does not perform his duties, he simply is not

pulling his weight. The performance of these duties is, therefore, the obligation given in exchange for the privilege of being a part of the Pueblo culture.

There have been a small number of cases in the past where Pueblo men have tried to avoid their community obligations. Each time, the man has been brought before the Principals and the duties and the necessity of performing these duties were explained to him. If he still refuses to perform these obligations, he must leave the Pueblo.

The women have certain obligations too, but these are really not of a basic religious nature. The women are in charge of taking care of the house and, therefore, the women's obligations are such things as cooking and other domestic chores to support the men as the men perform their obligations. The women's obligations can be performed by outsiders without really interfering with the religious functions and obligations performed by the men.

The religion of the Pueblo is based on unity, that things are done communally, as a group. If one person breaks the unity, the basis of the action is broken and is, therefore, done in violation of the religion.

JAMES R. MARTINEZ, *Governor*

(Subscription Omitted in Printing)

APPENDIX G

Ordinance Governing Residence Status of Female Members Who Marry Non-Members.

THIS ORDINANCE, duly enacted this 26th day of March, 1975, by the Council of the Pueblo of San Ildefonso, an Indian Tribe.

WHEREAS, the Pueblo of San Ildefonso is experiencing a serious problem of having persons, both Indian and non-Indian, who are not members of the Pueblo residing on the Pueblo lands because such persons are married to members; and

WHEREAS, it has long been the custom and tradition of the Pueblo to recognize that male members of the Pueblo may reside on the Pueblo lands with their non-member spouses, and families, that female members who marry non-members must not maintain a residence on the lands of the Pueblo; and

WHEREAS, the ordinances of the Pueblo of San Ildefonso dated January 11, 1965 and March 24, 1965, regarding membership in the Pueblo and interests in land in the Pueblo, respectively do not specifically set forth the residential status of female members of the Pueblo who marry non-members; and

WHEREAS, the Council of the Pueblo of San Ildefonso wishes by this ordinance, to clarify the residential status of female members married to non-members who reside on the Pueblo of San Ildefonso lands;

NOW, THEREFORE, IT IS ENACTED AND ORDAINED AS FOLLOWS:

1. *Definitions*

   (a) "Indian" means any person who has not less than one-fourth Indian blood.

   (b) "Non-Indian" means any person who has less than one-fourth Indian blood.

   (c) "Member" means any person duly recognized as a member of the Pueblo of San Ildefonso.

(d) "Non-Member" means any person who is not a duly recognized member of the Pueblo of San Ildefonso, whether such person is an Indian or Non-Indian.

(e) "Pueblo of San Ildefonso lands" means any lands owned by the Pueblo of San Ildefonso or held in trust for the Pueblo of San Ildefonso by the United States.

(f) "Residence" or "residing" means the establishment of a permanent home, including a trailer or mobile home, on the Pueblo of San Ildefonso lands. It shall be presumed that living in such a home for more than 30 days shall be the establishment of a permanent home.

2. No female member of the Pueblo of San Ildefonso who is married to a non-member shall be allowed to establish a residence on the Pueblo of San Ildefonso lands. All female members married to non-members who have heretofore established a residence on such lands shall remove themselves and their immediate families from such lands within 90 days from the effective date of this Ordinance. Such time may be extended by written consent of the Council for good cause shown.

3. Nothing herein shall abrogate any rights of any Indian to membership in the Pueblo of San Ildefonso pursuant to the membership ordinance dated January 11, 1965, or any amendment thereto.

4. Nothing herein shall abrogate any inheritance rights set forth in the ordinance of March 24, 1965, or any amendment thereto, provided, however, that no interest in Pueblo of San Ildefonso lands shall ever be sold, transferred or devised to any person not a member of the Pueblo nor shall any interest in such lands be inherited by any person not a member of the Pueblo.

5. In the event a female member of the Pueblo marries an Indian, and they desire to reside on Pueblo of San Ildefonso lands, the male non-member spouse who is an Indian may apply to the Council for membership in the Pueblo. Such application for membership shall be governed by the provisions of the Ordinance of January 11, 1965 or any amendment thereto.

6. In the event the provisions of this Ordinance conflict with any provisions of the Ordinance of January 11, 1965 or the Ordinance of March 24, 1965, this Ordinance shall control and supersede the provisions of said Ordinances.

7. If any portion of this ordinance or the effect thereof as to any person or situation is held invalid, such invalidity shall not affect the validity of the remaining portions of this ordinance or the effect thereof as to all other persons or situations, and to this end the provisions of this ordinance are severable.

8. This Ordinance shall be effective when ratified at a Council meeting of the Pueblo.

/s/ James R. Martinez
Governor

/s/ Martin Aguilar
Lieutenant Governor

Attest:

/s/ Douglas A. Trigil
Secretary

Council Members:

/s/ Louis Naranjo, Jr.
/s/ Robert P. Sigeles
/s/ Dennis P. Martinez
/s/ D. S. Martinez
/s/ Gilbert Atencio
/s/ Jacundo Sanchez
/s/ George Martinez
/s/ Tony E. Glenoir
/s/ Epifanio Pena

APPENDIX H

Affidavit

STATE OF NEW MEXICO
COUNTY OF SANDOVAL } ss.

JERRY QUINTANA, of lawful age, upon being duly sworn on his oath, states:

1. He is the Governor of the Pueblo de Cochiti, an Indian Tribe. He has been Governor since his inauguration into office in January, 1976.

2. The government of the Pueblo de Cochiti is based on tradition and religion. The men of the Pueblo are the backbone of the religion. Consequently, the men run the Government, which is, largely, selected by the religious leaders. Women have no voice in the selection of the government nor are they members of the Council.

The Council at the Pueblo de Cochiti consists of all those men who have ever held high office in the Pueblo. Once a man is selected for high office, such as Governor, he automatically becomes a member of the Council, for the remainder of his life. Each year, a selection is made for the office of Governor. The person selected may be a man already on the Council, who has held office in previous years or it may be a man who has never held office but in whom trust is reposed. The selection is made by our two religious leaders, the Cacique and his assistant. These two men are not on the Council and never hold secular office. The selection is ratified by the adult men of the Pueblo at meetings held in our Kivas. At no time is the selection made by the Cacique and his assistant ever questioned. The man selected for Governor cannot and does not refuse office.

A non-Indian or an Indian from another tribe are never allowed to participate in any way with the Tribal government or the process of selection of the Governor.

The Council also does not want non-Indian men or Indians from outside the Pueblos to live at the Pueblo. There are several reasons for this. We fear that non-Indians might try to have us give up our traditional religion or to damage it some way. More importantly, we fear, based on past experience, that the non-Indians or outside Indians such as Navajos will try to avoid performance of community obligations required of all male members. And we do not want our Pueblo to become a haven for men from the outside who do not want to pay property taxes.

All men within the Pueblo are required to perform certain community obligations, which have a religious basis. If a man does not perform these obligations, our religion is violated because it is our rule that all men are required to perform. We believe that all men in the Pueblo must do his share in the community and, therefore, doing one's share in an obligation which is in exchange for the privilege of being part of the Pueblo.

No man in the Pueblo ever questions whether he must perform his community obligations. It is understood that while a man and his family are free to leave the Pueblo at any time to live on the outside, he must perform his obligations if he continues to live in the Pueblo.

The women of the Pueblo also have certain obligations but these obligations are not of a basic religious nature and are to support the men. These obligations can be performed by outsiders without any real disruption of the religious functions of men or the community obligations of men. Therefore, we do not have any strong feeling about men from the Pueblo bringing in wives from the outside.

I have read the affidavit of Governor James R. Martinez of San Ildefonso Pueblo, and I have read the San Ildefonso Pueblo Ordinance of August 26, 1975. The Pueblo de Cochiti does not have any written ordinance concerning residence on the Pueblo. However, the traditional rule of

Cohiti has been that a women who marries an outsider must move out of the Pueblo while a Cochiti man who marries an outsider may bring his wife into the Pueblo to live with him. We have this rule and enforce it because we cannot have men from the outside in our Pueblo traditions and religion.

/s/ JERRY QUINTANA
Jerry Quintana

(Subscription Omitted in Printing)

APPENDIX I

Affidavit

STATE OF NEW MEXICO
COUNTY OF SANDOVAL } ss.

RONALD E. JOHNSON, of lawful age, upon being duly sworn on his oath, states:

1. He is the Governor of the Pueblo of Laguna, an Indian Tribe. Te has been Governor of said Tribe since his inauguration into office in January, 1975.

2. The Pueblo of Laguna is organized under Section 16 of the Act of Congress of June 18, 1934 (48 Stat. 987), with its basic governmental document being the Amended Constitution and By Laws of Laguna Pueblo, approved by the Secretary of the Interior on November 10, 1956.

3. Attached to this affidavit is a true copy of Article II of the said Amended Constitution and By Laws, which set forth the membership standards and qualifications of the Pueblo of Laguna.

4. The provisions of Article II, Section 1(d)(1) and (2) which exclude from membership certain children of Laguna fathers and non-Laguna mothers were included in the Amended Constitution as a reiteration and codification of existing Laguna custom. The Laguna Council in its consideration of the 1958 Amended Constitution wanted to make sure that persons entitled to membership were reared in a setting which exposed them to the influence of the Pueblo. The illegitimate child of a Laguna father and a non-Laguna mother will most likely not have any contact with the Pueblo, because such child would, in most cases, be living off the reservation. The problem was acute in 1958 and still is, because of a large number of Laguna men have served in the Armed Forces of the United States, in World War II, the Korean conflict, the Vietnam Conflict and at times between and after such conflicts and have fathered children by women who are non-Lagunas.

ROLAND E. JOHNSON, *Governor*

(Subscription Omitted in Printing)

APPENDIX J

Affidavit

STATE OF NEW MEXICO }
COUNTY OF TAOS } ss.

JUAN DE JESUS ROMERO, being first duly sworn, states:

1. I am the Cacique of the Pueblo of Taos, the senior official of the General Council of the Pueblo, as well as the principal religious leader. I was Governor for several terms before I became Cacique nearly twenty years ago. My religious training for community service began in the traditional way, when I was a youth, and continued regularly from that time on.

2. The unwritten traditions, customs and laws by which Taos Pueblo has been governed from time immemorial are based in the religion of the Pueblo, which in turn pervades and safeguards all aspects of the community's life and shapes and sustains the individual members thereof. For this reason, the execution of high public office requires a thorough knowledge of the religion, which can only be gained by a lifetime of training and participation. Such training is intensive and rigorous, starting in early adolescence, and has always necessarily been restricted to male members. Taos Pueblo has been subject to three different sovereign nations since the sixteenth century and to vigorous efforts to suppress its religion, the latest in the 1920's and 30's. Nevertheless, the religious societies of the Pueblo to this day continue regular six-to-eighteen month religious training programs for young boys, who are excused from school attendance during their first intensive training period. Thereafter, training continues at prescribed intervals, regular participation is expected, and no man is considered sufficiently prepared for public office until he has fulfilled these obligations for more than a decade. Eligibility for the highest offices and for service on the General Council is not reached until much later in life, after many more years of preparation.

3. Although not every male member elects to pursue the intensive training required for high public and religious office, varying degrees of such training are made available and expected of all men in the Pueblo to prepare them for other vital religious and community service functions. Their regular participation in the ceremonial and religious life of the Pueblo is thus essential to the community, the preservation of its culture, and the survival of its recognized traditional form of self-government.

4. All members of the Pueblo, whether male or female, are by tradition members for life regardless of their marital status (unless membership is voluntarily relinquished or superseded by enrollment in another tribe). The right to membership, however, naturally derives from male members, who bear the responsibility for the continuity of Pueblo community and its government. The training of female members does not prepare them for this responsibility. Because of his religious training, a male member who marries a non-member can ensure continuity through his children, but a female member who marries a non-member cannot. The children of female members of other tribes are members of their fathers' tribes, and thus cannot also be members of Taos Pueblo. Such children, as well as the children of female members who marry non-Indians, are the responsibility of their fathers, who have no knowledge of the unique culture of Taos Pueblo, and who cannot under any circumstances be absorbed into the Pueblo's religious life. Children who lose the guardianship of their non-member fathers, however, or illegitimate children, may become eligible for membership if they are adopted in early childhood by (or are wards of) a related head of family who is a Pueblo member and who accepts responsibility for their upbringing.

/s/ JUAN DE JESUS ROMERO
Cacique

(SUBSCRIPTION OMITTED IN PRINTING)

APPENDIX K

The Pueblo Social Organization as Basis for Rules of Tribal Membership

FLORENCE HAWLEY ELLIS
Prof. Emeritus of Anthropology
UNM

"If the social structure is a network of relations binding the individuals of a social group together for certain purposes, then social structures may differ in the number of individuals bound together and in the character and complexity of the ties uniting them with one another." Eggan 1950:6.

The problem which has arisen from the decision of the Tenth Circuit in *Martinez* v. *Santa Clara* has raised serious concern among the other Indian Pueblos. The basis of their concern is two-fold. The first is that their native tribal governments, a separate set of leaders and council for each pueblo, will be stripped of the power to control their own people. Such a situation would be the forerunner to complete breakdown of tribal autonomy and power for unity or for action; it foreshadows the confusion and cultural collapse witnessed in such Indian groups as the Sioux. The second is the breakdown which would be imposed on the type of social organization specific to an individual pueblo when its rules of membership are tossed to the winds, for those rules are part of a social system which is all pervasive because it stems directly out of that specific group's concepts of kinship. Because of the depth of its importance, we shall take up this second matter first. We shall begin with some general statements which are necessary to understanding of the Pueblos as cultural groups.

Introduction: The Pueblos exist and always have existed as a number of separate tribes. Their languages fall into four different stocks. The Hopi of the west (northern Arizona) speak Hopic, distantly related to the language of the

non-Pueblo Shoshoneans, their neighbors to the north. Neither Hopic nor any of the other Pueblo languages are related to Zunian, the language of the Zunis who originally lived in numerous pueblos but finally have concentrated in one pueblo plus farm villages. To the east of Zuni are the pueblos which speak Keresan: Acoma, Laguna, San Felipe, Santo Domingo, and Cochiti. Keresan is not related to any of the other Pueblo languages, nor, is anyone certain of its being related to any language spoken elsewhere. The other Pueblo family of languages is Tanoan, of which there are three branches, Tiwa, Tewa, and Towa. The Tewa live north of Santa Fe; Santa Clara and San Ildefonso fall into this group, but there also are San Juan, Tesuque, Pojoaque, and Nambé, and in the past there were others. Four Tiwa villages remain today, Taos and Picuris as the two most northern pueblos, and Sandia and Isleta, the one north and other south of Albuquerque. Jemez is the remaining Towa pueblo. It is immediately apparent from this linguistic separation that far in the past peoples of different origins settled in the Southwest. Here they faced the problem of adjusting their way of life to the environment, an external adjustment to the local ecology which, broadly speaking, follows one pattern. In the west (eastern Arizona and western New Mexico) these people lived upon a high plateau divided by mesas, canyons, and rivers or washes more often dry than not. Precipitation was low and, coming primarily in summer thunderstorms with accompanying run off, made dry farming hazardous. As partial compensation, Zuni and other pueblos farther to the east developed relatively small irrigation systems even before the Spaniards arrived in 1540, but constant streams from which water could be taken were few. From Laguna eastward, river water was more available, though still far from dependable. After 1540 the pueblos, with villages greater in number than today, were almost entirely located in valleys, farming largely, but not entirely, by ditch irrigation. The people lived in compact communities

in which abode or stone homes were built contiguously and above each other to form blocks or apartment houses up to 4 or 5 stories in height. In summer, many families moved to small structures near their farms. Kivas and ceremonial rooms used by the numerous religious societies were located in the plazas and/or house blocks. Hunting and gathering supplemented the irrigated agriculture. Pottery, baskets, and woven fabrics were made and used by all though some specialization in these lines permitted trade. As Eggan, one of the major social anthropologists of this generation, states:

> "For the Pueblo area, itself, it may be said that in material culture, on the one hand and in the ideas, beliefs, and sentiments, on the other, there is a remarkable unity. Each village has achieved a social integration which has been strong enough to keep the society from disintegration, if not from change. That these results have been reached through varying types of social organization is important for theoretical purposes."

These varying types of social organization, which Eggan and other anthropologists spent years untangling, have been found to derive directly from the specific type of kinship system fundamental to each linguistic group. In other words, the type of thinking which is found in the kinship grouping (*varying from linguistic family to linguistic family and appreciably different from that of our own thinking and kinship grouping*) is basic to type of social organization within each pueblo. This includes the concepts regarding rules of membership within each pueblo tribe. The tribe, of course, is thought of rather as an enlarged family. We do the same in thinking of citizens of the United States making up one "family" which acts together through its government and thinks together through its mores. However, much more flexibility and individual variation is permitted and expected in a large nation than for a small tribe because the small unit which is not conservative quickly loses its identity and ceases to exist. This is precisely what is feared by the Pueblos, who have long stressed conservatism and have managed to hold themselves together and to maintain their people in a state of much greater psychological equilibrium and economic stability during periods of exaggerated rates of change than almost any other Indian people of the United States. It is, therefore, of great importance to understand the kinship system and social structure of a people whose regulations for tribal membership are under attack, for these matters reflect the fundamental manner of thinking, the philosophy, of that tribe.

As background to such a study, which we can go into but briefly in a paper, we need to digest some of the accepted concepts used in studies of social organization. Some quotes from the introduction Eggan gives for his classic on Pueblo social organization are in order:

> A society is a group of individuals who have adjusted their interests sufficiently to cooperate in satisfying their various needs. Culture is the set of conventional attitudes and behavior patterns by which the mutual adaption and cooperation is carried out. On the human level, a society cannot exist without culture, nor a culture without the individuals of a social group.
>
> . . . The units of social behavior in any society are the social usages—behavior patterns expectable between different individuals or groups under given conditions. . . . The units of social structure in any society are the social relations which develop through the recurring expression in behavior or social usages. Conventional behavior between individuals or groups establishes social relations which develop through the recurring expression in behavior of social usages. Conventional behavior between individuals or groups establishes social relations which may be abstracted from the behavior in which they are imbedded and, for certain purposes, treated separately. . . . Institutions . . . are composed of individuals organized in a social structure with a set of attitudes and behavior pat-

terns through which the structure is exemplified and the institutional ends are achieved,

> . . . it is necessary to utilize various criteria as indexes of social structure. Some of these are limiting factors: the size of the social group, the density of its population, and the territorial arrangement. More important as indexes are various subdivisions of the social structure, the sex and age divisions, the kinship system, and the various formal and informal organizations which the group may take. . . . *the kinship system has proved, in many cases, to be the most useful index of social structure. In many societies, the kinship system represents practically the entire social structure, and, even when there are laborate developments of segmentary and associational structures, these are frequently closely associated with the kinship system. In some types of social structure (our own example) kinship plays a much less important role.* (Underlining ours)

The kinship system consists of socially recognized relations between individuals who are genealogically and affinally connected, plus the set of social usages which normally prevails among them. These relations originate in the domestic family but are largely socially determined. Between each pair of relatives there are rights and duties which define their relation; these relations are usually organized in such a way that they are consistent with one another and result in a minimum of conflict under ordinary circumstances. *In many societies these relationships, and the corresponding behavior patterns, are widely extended, making the kinship system coterminous in effect with the tribe.* (Underlining ours)

Kinship terms are part of the social usages but also symbolize the character of the relationships between relatives. Kinship terminology represents one means of organizing relations between kindred and for extending these for social purposes. From this standpoint the emphasis on terms of relationship as strictly linguistic phenomena is not warranted. Since, however, there is usually a fairly close correlation between the terminology and the social behavior of relatives, in

the absence of information concerning social usages, some insight into the kinship system may be obtained by a study of the way in which relatives are classified terminologically.

By the analysis and comparison of various kinship systems a limited number of structural principles have been worked out which derive from the relations existing in the elementary family. Such principles as the "equivalence of siblings," the "differentiation of sex," the "relationship of generations," the "unity of the lineage group," and others have been defined. These principles, representing descriptive summaries of social relations and social behavior, are found in varying proportions and arrangements in different systems, and in other aspects of the social structure as well, and thus offer a basis for preliminary comparison and classification. Since such principles often lie behind diverse institutions, they may suggest explanations of particular correlated features. (Eggan 1950:4-5, 9, 10-11)

The old position of Kroeber, that kinship nomenclature is largely explainable in terms of linguistics rather than representative of sociological factors has been largely superceded by that of Lowie, Sapir, Gifford, Lesser, Eggan, and others. Lowie's (1929) study of the kinship system and clan organization among the Hopi or First and Second Mesa is our first example:

> Relationship terms are studied by the Anthropologists not merely as so many words inviting philological analysis and comparison, but as correlates of social custom. Broadly speaking, the use of a specific kinship designation, e.g. for the maternal as distinguished from the paternal uncle, indicates that the former receives differential treatment at the hands of his nieces and nephews. Further, if a term of this sort embraces a number of individuals, the probability is that the speaker is linked to all of them by the same set of mutual duties and claims, though their intensity may vary with the closeness of the relationship. *Sometimes the very essence of social fabric may be demonstrably con-*

> *nected with the mode of classifying kin. Thus kinship nomenclature becomes one of the most important topics of social organization.* (Lowie 1929:84. Underlining ours.)

We might apologize for this lengthy background, but for those not working primarily in this field, a resumé of the most important concepts which provide a context within which we shall couch our specific study is necessary for understanding.

We now look into the Tewa Pueblo system of kinship and social organization.

Pueblo Basics: None of the Pueblo systems parallel our own, and it is an error in judgment to attempt understanding or evaluation of the Pueblo system in terms of ours. The parts should be understood in terms of the whole. No system of social organization works perfectly but those which exist today have aided the ancestors of our Indians in surviving droughts, crop failures, and subsequent moves to seek new areas for homes and farms. These systems survived through the stress of competition with other Pueblos for arable lands through centuries of increasing dryness and then through the attacks by Spaniards and by Plains Indians, and finally in the struggle for adjustment to the world of today, the necessity for some formal education, wage jobs, and constant wariness against those who would find means to take from the people some of their lands and other resources.

In truth, the Tewa concept of family and social organization is more like our own than the systems emphasizing unilateral lineage as found in Hopi, Zuni, and among the Keres. The Tewa system can be categorized as bilateral, but with emphasis on the patrilineal side, as clearly stated by anthropologist Alfonso Ortiz, a member of San Juan Pueblo. This seems to have been the original system throughout the Tewa pueblos of the past, though it was

considerably disrupted by factionalism spurred by acculturation which has torn at the vitals of SanIldefonso and Santa Clara since 1894, or earlier.

Tewa kinship terminology makes no distinction between relatives on mother's side from those on father's, nor is there any differentiation in terms used for male and for female relatives in the same category of relationship to the speaker. Where one does find terminological differences is in relation to age: older relatives are accorded a different term and more respect than younger kin of the same type and degree of relationship.

The Tewa family is a nucleus consisting of man, wife and children, and it is the privilege of this unit to choose its closest affiliation as with the family of either the man or his wife. Such affiliations more commonly are on the man's than on the wife's side, perhaps because of the work group and land inheritance. Land may be passed down to a son or a daughter, but in the past sons commonly remained with parents to aid with farm labor. Today, mutual assistance patterns persist, even though wage work has, to a certain extent, superceded agricultural production. Changes in household affiliation or the beginning of a new household may arise from changes in factional affiliation or the creation of a new faction. The head of the family is an older male with leadership qualities, "and the members of his household are loyal to the views and sentiments of the faction with which he is aligned." (Dozier 1966: 172-173). The only exception seems to be that if there is no older male to fit into this position, the oldest female could be considered to stand as head of the family. The *Martinez* case decision of the Tenth Circuit comes to the conclusion that Santa Clara has discriminated against women. While this conclusion might have some merit from an Anglo point of view, it does not present an accurate picture of the status of women in the Pueblos. The female has always

held a social position more nearly equal to that of the male than in our society. This equality quite certainly stems from the fact that while men were the hunters, women were the gatherers, and while men handled the agriculture, women not only did gardening but were considered to own and be responsible for foods after they had been brought in from the fields. Women and men both worked at construction. Women and men each owned the craft work they produced and could use it in trade. Pueblo women were economically equal to the men and hence social equals, though specialization accorded to each sex certain responsibilities and privileges.

Beyond the household in the Tewa system is the moiety. The two moiety organizations found in every Tewa village are known respectively as the Summer and the Winter People. The concept of dualism is very important in Tewa thought (Ortiz 1969; Dozier 1970). If the native refers to his moiety group as his "clan" (as is more common than not among the Tewa), the misnomer stems from their having borrowed, without clear understanding, this term from questioning anthropologists who came their way in the late 19th century. In the Tewa system the Winter moiety technically is in charge of a pueblo during the winter season, their responsibilities concentrating on rituals for the winter solstice which opened the old native calendar and also on ceremonial activities concerned with hunting. Hunting, largely done in winter, was more important to the Tewa and to the Tiwa neighbors in Taos and Picuris than to the more southern pueblos because (1) the northern area was too chilly to produce cotton in any quantity, and (2) keeping a supply of clothing and other articles of tanned buckskin as well as of dried meat necessitated serious pursuit of the chase. The rituals and dances of the Winter People were intended to encourage increase of food animals and to insure hunters' luck. The Summer moiety, in its turn, is responsible for rituals and dances pertaining to summer

growth, especially of crops. Each moiety has (or had) its own cacique or leading officer, together with aides and lesser officials. During his first year every child is initiated into one of the two moieties, customarily that of his father unless his father is unknown. The child is given a moiety-specific name for use should he later represent the moiety supernatural in rituals or become a member of the important moiety society, the small priesthood containing the cacique or chief priest and a small body of men who work with him. A second moiety initiation is given the child between his 6th and 10th year, followed by a third, known a the "finishing," when he is 10 or older. This seems to have been the generally-held old Tewa system, but in San Juan it has suffered some modifications. San Juan Pueblo housed the first Spanish capital of New Mexico, from 1598 to 1610 and, from that time until the present time, villagers of Spanish descent have been close neighbors and the source of numerous spouses and much outside influence. As Ortiz says "... the process of recruitment into moieties seems to be partilineal. . .", but in San Juan a relative sometimes will request that one child of a family go into the moiety opposite to that of parents and the other siblings. Such a request is granted. Influence from the outside also has changed San Juan's rules of marriage so that the only prohibition is that imposed by the Catholic church: persons closer than fourth cousins in relationship may not marry. In San Ildefonso and San Juan the old system of moiety endogamy is enforced in that a woman who marries a man of the opposite moiety customarily goes through a new initiation and so moves into her husband's moiety. The family group as such thus forms a group within the big moiety. In Santa Clara the custom of moiety endogamy is common but not enforced for, as I have been told positively by Santa Clara people, it is impossible to change one's moiety. In common practice children almost always go into the moiety of father. The responsibilities and loyalties of

an individual belong to the moiety of his initiation, and moiety unity in thought and action are the strongest force in a Tewa pueblo.

The farm areas of the pueblo are divided into those of the Summer and those of the Winter People. Social and economic cooperation thus fall within the same large pool of moiety personnel as one's major ceremonial cooperation. Ortiz (1969:10) comments that "most of Tewa thought and action is organized according to the moiety division..." Although earlier anthropologists have suggested that the Tewa once may have had clans, detailed studies have proved this hypothesis incorrect. As far as can be seen the unilateral lineage never was a matter of importance to the Tewa. Instead, as Dozier makes clear (1970:165), emphasis has been on the moiety, which is overwhelmingly though not necessarily patrilineal in membership. It is easy to see how such a balanced system as that of the moieties could be thrown out of balance through jealousy or one group blaming the other for misfortunes befalling the tribe. Certainly native polarization of opinion on such issues as conservatism as opposed to what is considered to be "progress" has led to splits, even with the threat or reality of one group leading the pueblo. Two factors have largely prevented such a final dispersal. One is the loss of individual holdings of family-owned homes within the pueblo, even were new lands available elsewhere. The other is the fact that lifetime membership in the various religious societies or sodalities within a Tewa pueblo crosscuts moiety membership.

We can summarize what we have been saying by turning our discussion from the social organization, as such, to the individual, as such, and asking how a young Tewa would see himself in terms of identity:

> I am member of the — household, which is under the leadership of my father's father or his oldest brother,

> whose name we carry. I am a member of the — moiety, which is my father's. (A child born out of wedlock and with father untraceable necessarily goes into mother's moiety). My farm is on land belonging to that moiety, and our closest friends belong to it. I am a member of — Pueblo.

In actuality, his membership in the tribe, as customarily in his household and almost invariably in this moiety with its ceremonial, economic, and socio-political functions, comes through his father. This is the traditional Tewa system.

If inter-tribal or inter-racial marriage has not occurred, his tribe is that of mother as well as of father. The point of not marrying outside one's tribe and village was generally stressed by older people to the younger. I well recall long discussions of this when mothers fearfully hoped that neither their sons nor their daughters would take a mate from outside the pueblo. Marrying a member of a non-Pueblo tribe or a non-Indian was successively worse as a fate. It was considered good to go away to school to learn English and have good food and become fat, but it was also dangerous because it might lead to marriage to an outsider. Should this occur in spite of admonitions — and such occasions still were relatively rare at that time — the expectation of the Rio Grande Pueblos was that an all-Pueblo couple would live in the village to which the man belonged. A Pueblo man marrying a Spanish American woman brought her home to the village but might be required to build a house on the outskirts so that she would not witness secret ceremonial activities. Some exceptations must be admitted to the system of an Indian male taking his wife to his home. For instance, I know of two Hopi men who married Rio Grande Pueblo girls and remained in their wives' pueblos. Among the Hopi, the concept of matrilocal residence always has been strong; these men would have had no home whatsoever to take their wives into. Other problems undoubtedly created other exceptions, but occasional

exceptions do not negate a system. A mixed couple in which the man was Spanish American or Anglo usually lived in town or on a ranch; he often was tied to a job and his Indian wife looked forward to a life different from that in her pueblo. The cultural and personal dominance factor characteristic of a Spanish American male rarely would have tolerated any arrangement other than taking the bride to *his* home. Spanish Americans and the ancestral Spanish mixed a good deal of their blood with that of the Pueblos.

Needless to say, the long close contacts between the Tewa "with patrilineal tendencies" and the definitely patrilineal Spanish gave each a chance to recognize his own system in that of the other. Further, Anglos (the term used locally for all non-Indians and non-Spanish Americans) were pushing into the Tewa area after 1847-8. They were competitors for land and water. They carried power and prestige, little as the Pueblos and Spanish Americans cared to recognize it. A few of these, like the Spanish speakers, married Pueblo women. One whose history we know was the school teacher and trader, Thomas Dozier, father of Edward Dozier (anthropologist). He married a Santa Clara woman, lived in the pueblo, and cooperated in native community work. Even today he is recalled with respect and liking, and he must have exerted a great deal of influence on his wife's extended family and friends. So had the local churchmen, from early days to the present, who set down their baptismal records in terms of the surname of the father of a baptised child. In the 19th and 20th century there was added the none-too-casual influence of school teachers, physicians, nurses, and all the other non-Indians who stressed the use of *father's* name and ethnic membership in every day dealings with Indians. Our own society, in functional fact, is very patrilineally oriented. This use of father's surname, however, is closely paralleled in the use of a surname, usually that of the patrilineal side,

in designating the bilateral groups of kin which made up the household in Tewa system. This was the unit which the early anthropologists had seen but neither accurately nor clearly—man, wife, their unmarried children, and usually married sons and their wives and children, all grouped under the name which those anthropologists hesitantly set down as a probable-clan-name. In daily life the Pueblos went by their first names, as is usual today.

Although the patrilineal concept was not foreign, acculturation influences as such left a heavy residue of stress. It is generally thought after observation of a pronounced tendency toward factionalism in pueblos of the historic period, that one of the several possible explanations for the number of prehistoric ruins found in the Southwest may have been some budding off as the result of lengthy contentions. Ideally, the Pueblo people "keep a good heart" and cooperate with each other for the benefit of all. In reality, altercations which carry bitterness through years are far from uncommon, and "dirty linen" not infrequently is washed in public. Shouting matches can occur in a council meeting, invectives in a court room, and accusations of witchcraft or, more modernly, of various petty or larger wrongdoings at home. In other words, Pueblo people are not far different from ourselves. Among the Tewa, moiety organizations characteristically were competitive and tended to be somewhat jealous of each other. As far back as the 1880's (see Bandelier's papers: 1890:301), one moiety of a pueblo commonly tended to be progressive and the other conservative. Acculturation reinforced both of these tendencies. Through most of the 19th and early 20th centuries (Dozier 1966) a number of "progressive Santa Clara families" who opposed the dictates of Pueblo authorities "formed a core within the more 'progressively' oriented Winter moiety," objecting to a number of the old cumpulsory rules. In 1894 the canes of authority (staves of office) had come into the hands of those who called them-

selves the Conservatives, almost the entire Summor moiety plus a handful of Winter men, primarily the few at that period holding secular offices in that pueblo's government. This group saw their opportunity and appealed to the Indian Agency in Santa Fe to recognize their group, per se, as the *de facto* governing body of Santa Clara. The BIA, none too well informed in Pueblo culture and seeing whatever they saw rather from the surface, accepted the proposition, so Summer People ran Santa Clara's government on their own. The Winter People talked of secession. The Summer People suggested that Winter be expelled. One or the other might have happened except for the fact that no free land was available for refugee occupation.

The Winter Progressives finally decided that they would continue to live in the pueblo, but they would not be of it. They refused to participate in the community's religious dances or watch the Conservatives do their dancing. The Progressives would not take part in any ceremonies or attend the governor's council. They refused even to obey the orders of Pueblo officers where that seemed possible with relative impunity. From 1895 to 1935 the Summer moiety appointed all the important secular officers of Santa Clara and did what it could in carrying on the old once-cooperative ceremonies important to that pueblo. The Winter Progressives blamed the Summer People for the break in pueblo unity and hence laid on their head the responsibility for crop failures, illness, etc., all believed by Pueblo people to result from getting out of step with nature through improper behavior. Winter members of the two curing societies withdrew from their technically life-long membership, leaving only Summer People as members. Other local sodalities fared similarly. The Winter People in truth had seceded, even if they could not move away.

The main point to note here is that as the Summer and Winter People were patrilineal groups, with rare exceptions in membership, their alignment in this split was via father's side and the withdrawal to build a new pueblo town, had it occurred in complete fact, would have been on patrilineal alignment. Although moiety membership, like everything in the old Pueblo system of thought, was conceived primarily as a religious matter, the moiety existed as a closely integrated party with secular as well as religious concerns. Each had handled government of the pueblo for a half year in the past; now each was totally governing its own people for the full year. As one might expect, in time it was recognized that within each of the two units, there actually was some division into its own Progressives and Conservatives. One may think of this as merely making a total of four divisions to the tribe, but what really had happened was that two new tribes which we should call Santa Clara A and B had come into existence, each its own conservative and progressive moieties, though both tribes still occupied one village.

By 1934-35, Santa Clara was well aware of its debacle. A survey indicated that the big majority of persons within the pueblo, unhappy, resentful, and puzzled as to where they might turn, were in favor of intervention by the Indian Bureau in the hope that some sort of strong hand policy might pull Santa Clara out of the abyss. With the new Indian Reorganization Act as background, the Bureau of Indian Affairs now proposed and had accepted the concept of a tribal constitution which would provide for an elected secular government. At that time Laguna was the only pueblo with such an arrangement and there, as in Santa Clara, it had developed in the unhappy sequence of acculturation-stress-split syndrome, though in the Laguna case the early outside aid was not from the U. S. Government but from local whites.

Developing directly out of the new constitutional government in Santa Clara came written rules for tribal membership. The Santa Claras undoubtedly always had realized

that a moiety (Summer or Winter People) could secede as a unit, as the Winter People had threatened, but now they also were becoming aware of the desire of increasingly numerous non-Indians to pick up benefits of land, water, and possibly other resources through marriage into the tribe. The 1939 Santa Clara membership rules were intended to protect the pueblo. They were a codification of the old unwritten principle that membership in the tribe was tantamount to membership in one of the two moieties into which, in the past, every individual had been inducted and within which every family had its place as a unit. That was the system along which the break had taken place and which would have circumscribed each of the two new pueblos if the geographic separation so seriously contemplated had occurred, as it quite certainly would have in earlier times when free land still was available for occupation.

Let us now analyze the Laguna split which began about 1850 and came to a head "just about when the railroad came in", (1880 or 1881). The Laguna split was nothing less than civil war and the most outstanding event, by far, in the known history of this tribe. How was Laguna organized? Among the so-called "Western Pueblos" (Zuni, Hopi, Acoma, and Laguna), a division made by anthropologists on culture type rather than geographic lines, the family was the first primary unit of social organization and the clan the second. Both were matrilineal. These people also were matrilocal: a man moved into his wife's house at marriage (for Laguna see Parsons 1923:176). The kinship terms a person used for blood relatives within his mother's and his father's lineages differed appreciably, and persons married into the family were given distinctive terms. Houses were inherited through the matrilineal line. This still was mainly true in the very early 1920's when Parsons was there, although by that time the situation was relaxing. Parsons points out that changes in house ownership do exert some influence on kinship associations (Parsons 1923:248). The growing tendency of Lagunas to leave their home village in order to take outside jobs for periods of some years, plus a strong influence of the type involved with male ascendancy, have been very strong in Laguna as the result of Spanish and Anglo contacts. This much we know. What we know less about but can surmise through the specific bits and pieces Parsons picked up regarding religious societies, officers, and moieties is that Laguna's moiety system, weak in the 1920's, had been strong a century earlier but largely disappeared in the break.

The original founding of Laguna seems not to have been in 1698 or 1699, as customarily given by historians but, as indicated by sherds weathering from the southern ash pile, in the 15th century. (See Ellis, 1959). The ancestral nucleus, a Mesa Verdian-Acoma mixture, had been living in the pueblo of Punyana across the old lake from the knoll-outcrop where the village stands today. Only a few families may have made the initial move, but sometime between then and the last decade of the 17th century some families from the Rio Grande villages of Zia, Santa Ana, Cochiti, Jemez and, perhaps, Cieneguilla and other pueblos came into the area requesting a loan of lands. The historians say that the immigrants were getting out of the way of the Spaniards or were (less likely) seeking a spot where they could safely follow the Catholic religion. According to Laguna legend, however, they had left the Rio Grande because of drought (the tree-ring calendar substantiates this shortage of moisture) and consequent food shortage. Borrowing land for a time was not an uncommon practice in the past. Whatever the details, the Rio Grande contingent probably introduced Laguna's moieties, for the principle of dualism, so strong in the eastern pueblos, is weak in the western. I have been told that Laguna had two large kivas. The two sacred clown societies, in reality fertility societies and the most powerful in a pueblo, were, as in the Eastern Keresan villages, each associated with a moiety,

the Korena (Kurena, Kwiraina) with the Summer moiety and the Koshare or Kushale with the Winter. The closest ties of the cacique were to Koshare and Winter, which used the East Kiva. Summer used the West. (Parsons 1923: 231 and fn. 3).

From the standpoint of native culture preservation, Laguna had made a mistake in selecting the site of its village which was located on the main traveled road from east to west. Father Morfi reported 174 Indian families with 600 souls in Laguna in 1765 but added that 20 families of Spanish settlers lived in the same jurisdiction. In the late 1800's the Santa Fe railroad ran past the edge of the village. The main highway barely skirted it until the recent road change. More of a problem were the whites who settled in the pueblo, especially three who came about the same time and married into the tribe. These were Walter G. Marmon, Robert G. Marmon, and George Pradt (or Pratt), all surveyors. Walter became a government school teacher in 1870 or 1871; Robert became a trader. All were Protestants. Even before their time, a strong Protestant influence was being exerted by Rev. Samuel Gorman who settled in Laguna as a missionary in 1851. Dr. John Menaul lived in Laguna as a missionary from 1875 to 1887, superceding Marmon as missionary and teacher when the government school was taken over by the Presbyterian Church in 1875. The Marmons became so influential in the village that each served a term as Laguna governor, the appointment having been made by native religious leaders. The Marmons and some of the other six white men who later married into this pueblo sent their wives to school in Pennsylvania. Kwimé, the leader of the Korena society, had spent some years in Mexico with priests after his father, with whom he had gone south as a boy, died. Now that his sister had married one of the Marmons, he had further ties to the outer world. When we meet him about 1880, we find him using his connections with the whites to push the Progressive party, of which he was leader—which suggests that he probably was head of Summer moiety, also known as Squash. He undoubtedly was one of the two most powerful men in the village, the other being the cacique, who was associated with the Winter or Turquoise moiety, the Conservatives. The Conservatives followed the line of the old combination of Pueblo religion with Catholicism. Unfortunately, the cacique and some of the other major officers were elders and went down under confrontations and accusations of witchcraft. Matters went from threat to action until finally the main religious leaders and the families of the Conservatives were told to get out of the village. Some say that the image of the saint was pitched after them. Sadly packing their ceremonial paraphernalia on their backs, they started off on foot to settle for a short time at the small site of Mesita and then to go on into the Rio Grande seeking a new home. Isleta Pueblo, which had been worried over loss of some of their religious system through Spanish influences, the death of certain officers, and their close contact with Spanish Americans and Anglos in the Albuquerque area, accepted what remained of the group; the cacique already had died. Eventually, the majority of the Isleta Lagunas returned to Mesita, but even today relations between Mesita and Old Laguna tend to be uneasy. Kwimé had managed to make himself top man in Laguna, but he found his Progressives so uncomfortable without native religious observances that he had to bring in Acoma and Zuni aid to construct substitutes (Ellis 1959).

Our point is not the story of this split, with its details of shock and pain, but the fact that the split followed the same line as that in Santa Clara; division was by moiety group, the patrilineal faction entity.

The old constitution of Laguna Pueblo, modeled on that of the United States by the Marmons who did the writing ("We, the people of Laguna Pueblo, in order to establish —", etc.) has been revised and replaced. Laguna has

had the fortune to own uranium land, and after the leases had provided enough funds for the pueblo to do some public building, provide for scholarships, and invest for future security, it was decided that some moneys could be distributed to tribal members. How were tribal members to be defined? Already there was concern as to whether some intermarriages were based on a desire to share in the finances. For several years the council struggled with the problem, name by name, even sending officers to check in cities such as Holbrook and the area outside San Francisco where Indians have settled in numbers to work in the railroad shops.

Cochiti? Goldfrank (1927) and Lange (1959) have described the matrilineal clans and the patrilineal moieties of this pueblo, but it is Fox (1967:80-81) who has brought out the fundamental position of those moieties or kiva groups in the organization of the pueblo. Let us quote:

> "Despite the fact that the two *Kivas* are recruited by kinship and marriage, (a man takes his father's *Kiva*, a woman her husband's), Lange will not call them kinship groups, largely because there is an optative element in membership. The number of men who actually change *Kiva* is, however, extremely small, and membership is deeply felt. Even if more men changed their *Kiva*, this would not support his point. . . . (The Kiva) recruits members by kinship and marriage. . . . It is a kind of nationality. One has the same *Kiva* nationality as one's father. Each member is a citizen in his own right."

The kivas, as he says, are largely concerned with ritual, but in discussion of what he calls the patri-moiety we see the broad picture of this group's unity in thought and cooperation in action. A man, his wife, and his children are primarily citizens of their kiva. As some explain, one can change to the other kiva if personal troubles arise, but

eventually the one who has changed is likely to return to his own kiva because this, he feels, is his home.

After World War II Pueblo veterans returned with war brides who had little inclination for Pueblo life. By this time, the veterans themselves had experienced enough of the outside world to think in rather different terms than earlier. They wanted jobs which would bring in wages, and Cochitis sought these in Santa Fe as the Tewas sought them in Los Alamos and the Lagunas in the railroad towns or Albuquerque.

The pueblos which came to grips with the problems of citizenship within their tribes were the more acculturated, the more sophisticated in our understanding of the term and, therefore, more aware of the possibilities of loss of tribal resources to themselves or their descendants. When they set down rules stating that tribal membership for the offspring of mixed marriages should follow that of the father, they were putting into words the old generalities of moiety affiliation along which breaks occurred and withdrawal was possible, even though an occasional exception might occur. These were the lines which separated the in-group from the out-group, as they all knew even if they did not go into anthropological discussions of moieties and the big-kiva units of the Keres which ethnologists usually also designate as moieties. In truth, the Pueblos rarely talk freely about their clans, moieties, and religious societies to non-Indians. That the influence of Spanish and Anglo emphasis on use of father's name and responsibility for his children may have added some spur to the concept of tribal membership through father in mixed marriages is possible, but functioning patri-moieties go farther into the past than contacts with non-Indians.

The Wider Effects of the Tenth Circuit Court Decision in Martinez v. *Santa Clara Pueblo:* In the Pueblo system, the native government of each tribe-village since time immemorial has been responsible for the control and welfare

of its people. The system is more impressive, when one understands it because the men who comprised the pueblo officers and council were not paid. Their positions were considered to be a matter of their responsibility to their people; like all Pueblo communal work, it could be said to substitute for taxes, which pueblos do not levy. Nevertheless, officers and council members must spend a great deal of time at this work. They take their duties very seriously. Today the governors of Santa Clara and Laguna do receive a salary and spend full time at their duties. The situation varies in the other pueblos. However, it is still common that the officials are not paid and must give up their outside jobs to carry on their duties, sacrificing personal welfare for public good. It is not surprising that female relatives of a newly appointed governor used to weep for him and his family when the appointment—which could never be refused—was made public.

How do pueblo officers come into their positions? In the old Pueblo system, the leaders of all the religious organizations within a pueblo comprised what we would call a "religious council". Religion permeated daily life and the approval of supernatural beings was considered most important in earthly proceedings. The Spaniards who came into the Southwest in the 16th century were imbued with the concept of missionization and did not want to deal with "religious officers" of native peoples. In 1620, the King of Spain decreed that all native peoples under Spaniard rule must have a governor, lieutenant governor, and war captains, with their various assistants, to be elected annually. Among the Pueblos, these officers were appointed by the religious council from among the most responsible men of each village but with some concern that, if possible, they should speak the language of the outsiders and know something of their ways. The sequence of rapidly changing governors has made for difficulties in accomplishing projects of some scope, and today a number of the pueblos think of their governors as serving for at least two years

rather than one. Traditionally, all past governors and chief war captains automatically became council members and hence could continue to work for their pueblo in an advisory capacity. Although the religious officers of the pueblo originally used the secular officers largely as their "front men" and hence continued to handle much of the actual policies of a pueblo, outside contacts, especially since World War II, have secularized Pueblo governments to the point where the secular leaders act with a great deal more independence. The old native Pueblo religion itself has broken down considerably in some pueblos; it remains largely intact in others.

The pueblo council, then, is more important than ever as a governing body, and decisions may be put in the form of a statement from the governor but it is the council which has lengthily debated the issue and finally has reached an opinion on it. A pueblo council may be large, numbering as many as 40, but all of the men may not involve themselves, even though announcement of the meeting scheduled must be given everyone. The men meet in a council chamber which today is a modern building. The session is begun with a prayer by the governor, at which the men remove headbands if those are being worn. Each man is permitted to speak as long as he chooses on the subject under discussion; interruption is considered bad manners. The debates are apt to be lengthy because the old custom is to attempt to achieve universal agreement on what is to be done. Hence every side of the issue is discussed and rediscussed. There may not be table pounding, but there definitely can be shouting matches at touchy points, feelings as well as reasoning coming into the arguments as among ourselves. The feeling of responsibility to the pueblo is very strong and the council members, commonly unpaid, may spend days and nights working on an issue. The traditional values and customs are given a high priority as background to thinking; these have been tried and found to work through the centuries of the past and cannot

be unthinkingly flaunted in favor of something new unless thoroughly thought out. Consequently, the "Progressive" of a Pueblo probably would be categorized as Conservative in the broader view of the non-Indian.

The fact that the council and governor does feel responsible for the people of their pueblo and that the great majority look to council decisions as to the dictates of a careful and responsible set of family heads has kept the Pueblo tribes in general on an even keel. We have discussed the outstanding "breaks" as a means to understand the lines on which such separations may occur, but in none of the pueblos other than these we have discussed except, perhaps, San Ildefonso, has anything equal to those disruptions arisen. The system of Pueblo government is old, effective, and permeated with the concept of responsibility. What, then, is to happen to the Pueblo people if courts of the United States decide that it is their function rather than that of each Pueblo government council to say who shall and who shall not be members of the Pueblo, thus superimposing outside membership standards upon the Pueblos? If the Pueblo governing system cannot make these decisions, there is no decision which could be made by the Pueblo council for its people; any decision made could be challenged by some interested group and then tossed aside by courts in which the judges are outsiders thinking along lines of their own culture rather than that of these other peoples.

Such a situation obviously would herald the end of Pueblo culture as well as the end of Pueblo government. Stability would be gone.

Pueblo culture as a whole is changing, slowly. Among the Pueblo peoples, some individuals and families are changing faster than others, and there is nothing to prevent their moving into the outside world if they choose. That the authority of the governing body of any Pueblo should be overthrown to favor some small dissident unit

would be most dangerous, for small dissident units are known to be waiting in other pueblos to try their own efforts toward selfish ends should the first succeed. The real and very serious problem is a quick realization that if Pueblo governmental authority is no authority now, no matter how many centuries it has functioned to carry a very civilized people through dangers from a difficult environment and cultural contexts in the past, the celebrated Pueblo *stability* is lost. The fears of thinking Pueblo leaders today cannot be greater than the capacity for total disruption in all the pueblos if tribal authority is flaunted by U.S. authority.

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APPENDIX L.

Affidavit

STATE OF NEW MEXICO
COUNTY OF BERNALILLO } ss.

SEFERINO LENTE, of lawful age and upon being duly sworn upon his oath, states:

1. That he is the Governor of the Pueblo of Isleta, an Indian Tribe duly recognized by the Secretary of Interior of the United States Government; that he has been the Governor since his inauguration into office in January, 1975. That he has held tribal office for a number of years, including a two-year term as Secretary of the Tribal Council.

2. That the Pueblo of Isleta is an ancient community, there being anthropogelical evidence that it has existed in its present situs for at least ten thousand (10,000) years. The Puebla of Isleta is a traditional Indian community, the sources of its unity being its land, the language which is still preserved and is the first language of the Isleta Indian people, the religion, and the tradition of the Pueblo. While the Tribe, unlike some Indian Pueblos, does not disallow women from the voting process nor from other aspects of tribal government, they share with virtually all Indian Pueblos certain rules with respect to non-Indian men or non-Isleta Indians residing upon and participating in its traditional events. The traditional rule is and has been that an Isleta man may marry and bring onto the reservation his non-member wife. The children of the union will be regarded as Isleta Indians and may participate in all of the religious and traditional functions. On the other hand, if an Isleta woman marries a non-member man, she is expected to live with him at his home, presumably at another reservation where he will be expected to live by rules which are similar to ours. This rule is not based on a feeling that women are inferior in any respect; to the contrary, they

have an equal if not greater responsibility in family life and other elements of tribal life which make our culture unique.

3. All Isleta men are expected to participate in the community work which is related to that culture and tradition. For example, irrigation for farming is our lifeblood, and all men must do a certain amount of community work in that regard. Women simply cannot do that work. This is not optional. *All men* must perform these obligations.

4. That it is also important that the Pueblo of Isleta retain its culture and language and not become a haven for non-member men who do not speak the language, who do not share and perform the community obligations, and who marry, seeking a safe haven from such obligations.

5. That if we allow or encourage non-member men to live on our reservation, which would be the effect of the *Martinez case*, it would only be a matter of time before we would lose our language, tradition, and culture, the essential qualities of our Indian community.

/s/ SEFERINO LENTE
Seferino Lente
Governor, Pueblo of Isleta

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